72-363 FILE COPY

Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1971

72-363

No. 72-.....

FLOSSIE V. GRIMES,

Petitioner,

v.

NOTTOWAY COUNTY SCHOOL BOARD,
THOMAS W. STAFFORD, SUPERINTENDENT,
ALTHEUS B. COUSINS, PRINCIPAL,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Of Counsel

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To The Honorable The Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States:

The Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States

Court of Appeals for the Fourth Circuit entered on June 6, 1972, affirming the judgment entered against the Petitioner in the United States District Court for the Eastern District of Virginia, Richmond Division.

OPINION BELOW

The written opinion of the United States District Court of the Eastern District of Virginia, Richmond Division, entered January 12, 1971, is appended hereto.

The written opinion of the United States Court of Appeals for the Fourth Circuit decided June 6, 1972, is appended hereto, affirming the lower Court.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit sought to be reviewed was decided June 6, 1972.

The jurisdiction of this Court is invoked under Sections 1254 and 1651 (a) of Title 28 of the United States Code.

QUESTIONS PRESENTED

I.

Whether A Nontenured Teacher Has An "Expectation Of Reemployment" Under The Policies And Practices Of The Defendant School System.

II.

Whether The Notice And Hearing Afforded The Plaintiff By The Defendants Met The Minimal Standards Of Procedural Due Process Of Law.

III.

Whether The School System Showed Cause For The Nonrenewal Of Teaching Contract.

IV.

Whether The Plaintiff Was Given A Hearing Before A Tribunal With Academic Expertise And The Appearance Of Impartiality.

V.

Did The Trial Court Err In Urging Trial Counsel To Stipulate That The Only Issue Of The Trial Was Whether The Notice And Hearing Constituted Minimal Standards Of Administrative Due Process Of Law.

STATEMENT OF THE CASE

The Appellant taught public school in Nottoway County, Virginia for seventeen years. Her Black Principal Altheus B. Cousins, in April 1968, before the system was integrated, declined to recommend renewal of her annual teaching contract with the Nottoway County School Board. The reasons for this adverse action are unclear. On May 20, 1968, the Appellant wrote a letter to the Superintendent, Mr. H. L. Blanton, and requested "a meeting with the School Board in order that our views may be reviewed and considered by this body." Further, said letter set forth three specific points to be discussed and considered. See Defendant's Exhibit No. 1 in the Appendix. By letter dated May 27, 1968, and received by her on or about May 28, 1968, from the Superintendent, the Appellant was notified that "There will be a Special Meeting of the School Board on Wednesday, May 29, 1968 at 7:30 P.M., for the specific purpose of hearing your grievances resulting from your not being reappointed by the School Board for the school year 1968-69. If you can be present at 7:30 P.M., you will be placed first on the agenda." Shortly before said meeting the Appellant received a copy of a letter from Principal Cousins to Superintendent Blanton dated May 29, 1968, which stated, among other things, "We cannot get Mrs.

Grimes to conform to the type of program that we wish to carry out at Luther H. Foster High School. Therefore, I have not recommended her for re-employment at Luther H. Foster High School." Although this letter comments on certain attributes of a teacher, it did not indict the Appellant on any specific charges of commission or omission or spell out the type of program that was being carried out at Luther H. Foster High School.

The Appellant and her Counsel appeared at the School Board hearing on May 29th. Statements were made by the Principal and Superintendent. There was no transcript or tape recording of this meeting. No format of a quasi-judicial nature was followed. After hearing comments by various persons at this meeting, the School Board meeting was adjourned until June 13, 1968. When the School Board convened on June 13, 1968, it voted unanimously not to overide the decision not to issue the Appellant a contract for the 1968-69 school year.

Appellant filed a Complaint for injunctive relief and restoration of employment in the United States District Court on November 21, 1969, under the Civil Rights Acts, 28 U.S.C. § 1343 (3) and 42 U.S.C. § 1983. A trial by the Court was held on September 25, 1970. The Court entered a final order denying Appellant relief and dismissing the Complaint on January 12, 1971, and filed January 14, 1971. From this final order the Appellant timely noted an appeal to the United States Court of Appeals for the Fourth Circuit. On June 6, 1972, the Appellate Court confirmed the ruling of the United States District. From this final order the Appellant timely noted an appeal to the Supreme Court of the United States.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I.

Whether A Nontentured Teacher Has An "Expectation Of Reemployment" Under The Policies And Practices Of The Defendant School System

A school board cannot act arbitrarily or capriciously in its selection process of renewing a teacher's contract. The "right to teach" is a recognized "liberty." The Fourteenth Amendment protects employment pursuits as pronounced in 1888 in *Dent* v. *State of West Virginia,* 129 U.S. 114, 121-122, 9 S.Ct. 231, 233 (1888):

> It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose . . . This right may in many respects be considered as a distinguishing feature of our republican institutions . . . The interest, or, as it is sometimes termed, the "estate," acquired in them—that is, the right to continue their prosecution—is often of great value to the processors, and cannot be arbitrarily taken from them, any more than their real or personal property can thus be taken.

The Appellant had no tenure, however her long employment by the Appellee's School Board by use of renewals of annual contracts was sufficient to give her the necessary expectancy of reemployment that constituted a protected interest. *Ferguson* v. *Thomas,* 430 F.2d 852 (5th Cir., June 2, 1970); *Greene* v. *Howard University,* 134 U.S. App. D.C. 81, 412 F.2d 1128 (1969); *Johnson* v. *Branch,* 364 F.2d 177 (4th Cir. 1966) (en banc), cert. denied, 385 U.S. 1003, 87 S.Ct. 17 L.Ed.2d 542 (1967); *Lucas* v. *Chapman,* 430 F.2d 945 (1970) (5th Cir.).

The *Lucas* case arising in Mississippi involves a school teacher without tenure after eleven years in the system as a

successful teacher. His termination was the action taken by his school board after receiving reports he had criticized the school board and faculty members at the rump session of a PTA meeting. Lucas filed a suit in the United States District Court for the Northern District of Mississippi seeking injunctive relief of reinstatement or, alternatively, damages on the ground that the contract was not renewed because of exercise of right of free speech and that his rights to procedural due process has been violated. The Court denied relief and the teacher appealed. The United States Court of Appeals, Fifth Circuit, held that if a teacher with protectible interest opposes his termination, he must be told the reason and what supports the reason and given opportunity to present his side, if he desires. The Court said further that if reasons for terminating teacher's employment are in non-constitutional area, school board's decision would be so arbitrary as to be constitutional violation if it were wholly unsupported by evidence. This case was remanded for a hearing *nunc pro tunc* before the school board after notice, reasons and list of witnesses supporting board's proposed adverse action.

In the instant case the Appellant is a teacher with twenty-nine years experience, seventeen of which were successfully completed in the Nottoway County School System. She clearly had an expectation of reemployment under the policies and practices of the Defendant school system.

II.

Whether The Notice And Hearing Afforded The Plaintiff By The Defendants Met The Minimal Standards Of Procedural Due Process Of Law

In *Ferguson* the Court spells out the standards of minimum procedural due process when a teacher who is terminated for cause opposes his termination.

Minimum procedural due process requires that:

> "(a) he be advised of the cause or causes for his termination in sufficient detail to fairly enable him to show any error that may exist,
>
> (b) he be advised of the names and the nature of the testimony of witnesses against him,
>
> (c) at a reasonable time after such advice he must be accorded a meaningful opportunity to be heard in his own defense,
>
> (d) that hearing should be before a tribunal that both possesses some academic expertise and has an apparent impartiality toward the charges."

Section 22-203 (1963) of the Code of Virginia was in effect at the time of Appellant's dismissal. It reads as follows:

> § 22-203. Employment and dismissal of teachers. The School Board on recommendation of the division superintendent shall employ teachers and place them in appropriate schools and shall dismiss teachers when delinquent, inefficient or otherwise unworthy.

There was no statutory or decisional Virginia law establishing procedures to effect the foregoing Code provision. However, there was a proposed amendment which is now § 22-217.1 *et seq.* providing tenure and a format for dismissals. The new procedures require (a) written notice setting forth reasons for dismissal, (b) at least a fifteen days' written notice of time and place of hearing, if requested, and (c) right to counsel, witnesses in teacher's behalf and other evidence. The legislature of Virginia believes the foregoing to be minimal standards of procedural due process. Applying these standards to the Appellant's case, we find that there was no written notice to her setting forth reasons for

dismissal but only a notion by Principal Cousins about what he thought a teacher should be. He mentioned in the May 29, 1968, letter to the Superintendent that the Appellant did not conform to the pattern envisioned for his school, but we do not know what that pattern is or if it is educationally sound. Second, the Appellant was given one day or less to respond between notice of hearing and hearing itself. This is untimely notice. Thirdly, since the Superintendent and Chairman of the School Board admitted in the record they did not know what an adversary hearing was before the Court defined it for them. Transcript, pp. 79 and 100. Further, Mr. Oliver W. Hill, Attorney for the Appellant at the May 29th school board meeting, stated that "no opportunity for such a hearing was ever established" to present witnesses and evidence for the Appellant. Transcript, page 21.

The Court below cannot equate the appearance on May 29, 1968 before the school board by the Appellant and her Counsel to be any more than an informal effort of conciliation, but certainly not as due process adversary proceedings because the notice and hearing afforded the Appellant did not meet the minimal standard of procedural due process of law. Counsel below never relinquished Appellant's claim that this meeting did not constitute minimal standards of administrative due process of law.

III.

Whether The School System Showed Cause For The Nonrenewal Of Teaching Contract

A fundamental right of a public school teacher is a statement of the reasons for a school board considering nonrenewal of a teaching contract, a notice of a hearing at which the teacher can respond to the stated reasons, and the

actual holding of such a hearing with sufficient time for the teacher to prepare a defense, obtain legal counsel, summon witnesses and offer such evidence as would be required to defend the proposed adverse action. *Perry et al.* v. *Sindermann*, 405 U.S. ....., *Gouge* v. *Joint School District No. 1*, 310 F. Supp. 984 (W.D. Wis. 1970); and *Johnson* v. *Branch*, 364 2d 177 (1966). Both *Roth* and *Gouge* hold that under the due process clause of the Fourteenth Amendment, a decision not to retain a nontenured professor employed by a state or university or a public school teacher may not rest on a basis wholly unsupported in fact, or on the basis wholly without reason.

By no stretch of the imagination can one say Principal Cousin's letter dated May 29, 1968, was a bill of particulars against the Appellant. Neither can charges be inferred from the Appellant's letter requesting a meeting with the board and to discuss three specific points.

We are compelled to argue that in the absence of a genuine issue of material facts as to the adverse reason or reasons for the nonrenewal of Appellant's teaching contract, she should be reinstated with all financial benefits restored and credits for retirement.

IV.

Whether The Plaintiff Was Given A Hearing Before A Tribunal With Academic Expertise And The Appearance Of Impartiality

A plain uncontradicted fact in this case is that both the Superintendent and the Chairman of the Nottoway County School Board had no understanding or comprehension of an adversary proceeding as admitted to in the record. Transcript, pages 79 and 100. The record is bare as to specific charges of nonprofessional conduct by the Appellant. The Appellant should not have been placed in the position of

having to prove her qualifications as a teacher without a bill of particulars. The Principal concluded that he could not recommend the Appellant for re-appointment for the 1968-69 school year and the Superintendent followed along with this conclusion. The decision below comments on the presence of the Appellant and her Counsel at the hearing held on May 29, 1968. The meeting held by the school board was not a forum constituting minimal due process standards as set forth in *Ferguson*.

V.

Did The Trial Court Err In Urging Trial Counsel To Stipulate That The Only Issue Of The Trial Was Whether The Notice And Hearing Constituted Minimal Standards Of Administrative Due Process Of Law

Simple justice demands that hindsight be employed in the instant case. At the trial, the presiding Judge was determined to declare the issues in an overly simplified manner. The judge's direct question as to the issue placed the Plaintiff's attorney in the posture of answering to a Court formed proposition as to the issue while there was no time or opportunity to think through clearly what the proposed stipulation meant. The Court's proffered stipulation was entirely too narrow and the Appellant should not be bound by it, having been a public school teacher for seventeen years. During the past 18 years, approximately twelve thousand Negro teachers and principals have been replaced in the South. The techniques have been very subtle and the hearings held below should not be a vehicle to dislocate the Appellant from the teaching profession, without cause.

CONCLUSION

The Appellant did not waive any constitutional rights in seeking a hearing as to why her teaching contract was not renewed. She was discharged without being given a reason. Accordingly, a writ of certiorari should be granted.

Respectfully submitted,

HUGH E. WATKINS
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Alexandria, Virginia 22314

ROBERT M. ALEXANDER
2011 South Glebe Road
Arlington, Virginia 22206
Counsel for Appellant

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COMPLAINT FOR INJUNCTION

Comes now the plaintiff, by counsel, and for cause of action, alleges as follows:

1. The action arises under the Civil Rights Acts, 28 U.S.C.A. § 1343(3), and 42 U.S.C.A. § 1983.

2. From 1951 to 1968, a period of seventeen years, plaintiff was employed by the Nottoway County School Board as an American Government teacher in the Luther H. Foster High School in Nottoway County, Virginia. Plaintiff holds a B.A. degree from Virginia Union University, Richmond, Virginia and M.Ed. degree from Temple University.

3. In May of 1968, plaintiff was informed by her principal, Altheus B. Cousins, a defendant herein, that he was not going to recommend to the superintendent (H. C. Blanton, now retired was the superintendent at the relevant times when this cause of action arose. He has now been succeeded by Thomas W. Stafford, a party defendant herein.) that her contract be renewed for the school year 1968-69 on the ground that she could not conform to his system.

4. Defendant Cousins began his tenure as principal of Luther Foster High School in the academic year 1966-67, fifteen years after plaintiff had been teaching at Luther Foster High School.

5. Plaintiff sought to have the then superintendent, H. L. Blanton (now retired) to intercede in her behalf. Mr. Blanton, after taking the matter under advisement, referred the case to the Nottoway County School Board, indicating his unwillingness to decide the matter through his offices.

6. On May 27, 1968, plaintiff was notified that a special meeting of the school board was to be convened on May 29, 1968 in order to hear plaintiff's grievances.

7. Plaintiff appeared with counsel at the meeting in which Mr. Blanton apprised the school board on the background, recommendations and considerations used in not renewing plaintiff's contract.

8. The board, after hearing plaintiff's attorney request for reconsideration of their action, postponed a decision until June 13, 1969. At the June meeting, the school board voted unanimously to refuse to override or set aside the recommendation of Mr. Cousins.

9. Plaintiff admits that the relationship that existed between she and Mr. Cousins was strained and that there may have been a personality conflict between them. However, the situation which existed in Nottoway County school system at the time her cause of action arose and which continues to exist within this school system were such that they proliferated a minor disagreement between two intelligent adults, into a major incident which finally resulted in plaintiff being deprived of a substantial right and privilege, to wit: to pursue her teaching profession in Nottoway County. The following factors, each of which is illegal and/or unconstitutional in its own right, combined and compounded resulting in an untenable situation for the plaintiff:

(a) The school board was not prepared to afford plaintiff a fair hearing because they were bound to uphold the principal's recommendation the same being tantamount to a vote of confidence for him. Hence, plaintiff was denied a fair and impartial tribunal to hear and pass upon her claims and defenses.

(b) Nottoway County's school system was then and still remains segregated. Since Luther Foster High School is the only black high school in the county, the only result of the inability of plaintiff and defendant Cousins to get along was

for plaintiff to lose her job since the prevailing segregation of schools in Nottoway County made it impossible for her to be transferred to a white high school.

10. The notice and hearing afforded plaintiff were insufficient in law and therefore her right to substantive and procedural due process was violated.

(a) The notice consisted of a letter dated May 27, 1968 advising plaintiff that she could appear before the school board on May 29, 1968 to present her grievances. No charges or specifications were contained in the letter. The notice gave plaintiff less than twenty-four hours (she didn't receive the letter until May 28) to prepare her case.

(b) The notice did not apprise plaintiff of the procedures or rules which would be followed in the schood board hearing. She was not advised of her right to counsel, her right to confront witnesses against her, or her right to have witnesses in her defense present. Further, the Virginia legislature did not provide teachers with a right to a hearing on the question of contract renewal. The Nottoway County School Board did not remedy this problem by providing a local procedure for the administrative adjudication of contract renewal controversies. Hence, plaintiff and her counsel had no guidelines as to what to expect at the forthcoming hearing.

(c) The hearing was not conducted in a manner best calculated to protect the interests of plaintiff. No advance provisions were made for the active and effective use of plaintiff's counsel who accompanied plaintiff to the hearing, nor was plaintiff advised of her right to have counsel present. Her purpose for having counsel present was to lend dignity to her purpose and perhaps impress upon the school board members the importance which she attached to the hearing.

(d) Plaintiff was led to believe that she had no right to the hearing scheduled for her and the scheduled hearing was merely an act of kindness or a gratuity bestowed on her by the superintendent and the school board. Operating on this premise, plaintiff instructed her counsel that the best approach would be a conciliatory one in which every effort would be made not to offend or irritate the school board members. Consequently, no objections to the legality or sufficiency of the hearing were made, especially since the school board's decision was postponed until a subsequent meeting. Plaintiff's counsel did not appear at the subsequent meeting where the decision was rendered.

11. The decision of the school board not to renew plaintiff's contract has seriously jeopardized plaintiff's ability to find similar and suitable employment in other nearby county school systems. Plaintiff is faced with the real problem of having to answer "yes" to the question, "Have you ever been refused the renewal of contract?" This answer severely prejudices her chances for gaining employment as a school teacher in Virginia public secondary schools. The problem is further exacerbated because plaintiff is still unsure of the reasons why her contract was not renewed—save the fact that she had a personality conflict and perhaps differences of opinion with her immediate supervisor, Mr. Cousins. The record of her hearing does not show the reasons for the school board's decision, nor does plaintiff have anything in the way of a "bill of particulars" outlining the basis for her dismissal. Hence, plaintiff is placed in the position of trying to explain the reasons for her contract not being renewed but having no record to substantiate her beliefs.

12. The refusal of the school board and the superintendent of Nottoway County School System have effectively and irrevocably prevented plaintiff from pursing her chosen

profession. Unless this Court grants the relief requested there exists no other adequate remedy for the irreparable injury to which plaintiff is being subjected.

Wherefore, plaintiff prays that:

(1) This Court take jurisdiction of this controversy and hear, as promptly as possible, this action and declare the rights of plaintiff.

(2) The Court issue a temporary restraining order, preliminary injunction and a permanent injunction enjoining the defendants, their successors and subordinates, from renewing and/or issuing plaintiff a teaching contract for the remainder of this academic school year 1969-70.

(3) The Court require defendants to establish a notice and hearing format which comports with current concepts of substantive and procedural due process.

(4) The Court require defendants to expunge from plaintiff's records any reference to the action taken by defendants in this matter unless and until defendants accord plaintiff notice and a hearing which comport with due process standards.

(5) For the plaintiff, costs of this action including reasonable attorney's fees.

(6) Such other and further relief as may be just, lawful and equitable in the premises.

/s/ JeRoyd W. Greene, Jr.
JeRoyd W. Greene, Jr.
Attorney for Plaintiff
12 West Leigh Street
Richmond, Virginia

ORDER

This suit was originally brought under the Civil Rights Acts, 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983.

All preliminary questions have heretofore been disposed of—the question before the undersigned being limited to whether the notice and hearing which was afforded the plaintiff comports with current minimal standards of administrative due process of law.

Upon consideration of the evidence heard, the argument of counsel and authorities cited, the Court is of the opinion that the notice and hearing afforded the plaintiff fully complied with the requirements of the then Virginia and federal law.

There was no real dispute in the facts. The plaintiff had taught in the Nottoway County schools for a period of seventeen years. Before the expiration of her then existing contract she was told by her principal that he would not recommend her for reappointment for the coming school year. Thereafter the plaintiff had several discussions with her principal and the school superintendent in re his proposed recommendation and his reasons for not recommending her reemployment.

In May of 1968 the plaintiff, by letter, requested a meeting with the School Board, specifying the points she desired to have discussed and considered. Pursuant to her request, the School Board called a special meeting for the purpose of hearing what she had to say.

The plaintiff was advised of the calling of this special School Board meeting—and she appeared in person and by counsel. The superintendent reiterated his recommendation publicly—the matter was fully discussed before the Board —and they listened to everything the plaintiff and her counsel had to say.

Plaintiff's counsel asked the Board to reconsider their action and the matter was deferred until June 13, 1969.

In the interim the superintendent, at the request of the plaintiff, mailed to her counsel a copy of the principal's letter in which he outlined the reasons for his recommendation for not giving her a new school contract. It should also be noted that the School Board at one of its regular meetings entertained a petition and heard from a delegation in re giving the plaintiff a contract for the coming school year.

The School Board reconvened on June 13th as scheduled; however, neither the plaintiff nor her attorney attended this meeting. Upon further discussion the Board unanimously voted to follow the recommendation of the principal which the superintendent had approved, namely, not to give the plaintiff a teaching contract for the coming school year.

Although the plaintiff and the principal are Negroes and the teacher who took her place is a Negro, it is not claimed that race was a factor in the School Board's action. In fact, the plaintiff by her counsel admits the principal was justified in his recommendation and that the School Board was justified in not giving her a new contract.

Although the School Board was not required to give the plaintiff a hearing re whether or not they were going to give her a teaching contract for the coming school year, under the then Virginia law they voluntarily did so. They convened a special board meeting so that the members could give their undivided attention to her complaint—they heard everything she had to say and were willing to listen to any other persons she wanted them to hear—The school superintendent stated publicly the reasons for not recommending that she be rehired. They allowed her counsel of her own choosing and they gave him every opportunity to question the superintendent and/or any of the board members.

They deferred their final vote for some two weeks at his request. In fact, there is not one word of evidence in this case indicating that the plaintiff was denied the right to literally do anything she wanted to do or to say anything she wanted to say in respect to the subject matter under consideration. Administrative due process was not lacking in the premises.

This case, therefore, should be dismissed, and

It Is So Ordered.

The Clerk will send a copy of this order to all counsel of record.

/s/ Oren R. Lewis
United States District Judge

At Alexandria
January 12, 1971

NOTICE OF APPEAL

Notice is hereby given that Flossie V. Grimes, Plaintiff above named, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the final order of dismissal entered in this action on the 14th day of January, 1971.

That among other things the reasons for noting this appeal are:

1. That the Court erred in dismissing the complaint filed herein because a nontenured teacher has an "expectation of reemployment" under the policies and practices of the Defendant school system.

2. That the notice and hearing afforded to the Plaintiff by the Defendants did not meet the minimal standards of procedural due process of law.

3. That the school system failed to show cause for the

nonrenewal and give the teacher a hearing before a tribunal with academic expertise and the appearance of impartiality.

Respecfully submitted,

/s/ Hugh E. Watkins
Hugh E. Watkins
425 North Henry Street
Alexandria, Virginia 22314

/s/ Robert M. Alexander
Robert M. Alexander
2011 South Glebe Road
Arlington, Virginia 22204

Attorneys for the Plaintiff

Dated: February 9, 1971
At Alexandria, Virginia

ORDER EXTENDING TIME FOR DOCKETING APPEAL RECORD

It being represented unto the court that further time will be required within which to prepare and file the appeal record in the United States Court of Appeals for the Fourth Circuit,

It is ORDERED that the time for filing and docketing the appeal record in the appellate court be and the same hereby is, extended to and including ninety days from the date the last notice of appeal was filed in this action.

Let copies hereof be forwarded to counsel of record and to the official court reporter.

/s/ Robert R. Merhige
United States District Judge

Dated:
March 9, 1971

PLAINTIFF'S LETTER TO SUPERINTENDENT

Box 262
Amelia, Virginia
May 20, 1968

Mr. H. L. Blanton
Division Superintendent of Schools
Nottoway County
Nottoway, Virginia

Dear Mr. Blanton:

I have been informed verbally by Mr. Cousins that my request concerning reappointment has not been reconsidered. In so far as I find it difficult to equate the reasons given not to recommend with the action taken, I am asking if you will please arrange a meeting with the School Board in order that our views may be reviewed and considered by this body.

Specific points listed below are ones which I would like discussed and considered:

1) The actual number of pupils referred to the office, instead of being released in the halls at will, has been small. It did happen, however, that those who persisted in obstructing teaching-learning procedures were referred more than once.

2) The reasons attempts were made, on my part, to keep unscheduled pupil-teacher-principal talks brief by supplying written description was that to have done the opposite would have meant leaving a group unsupervised at a time psychologically inappropriate.

3) Pupils who might have inferred any dislike about how their work is evaluated have been those who were using work-avoidance and defense mechanisms.

With the encounters I am experiencing, I shall most certainly be able to envision and implement workable solutions concerning the above within the framework of the present arrangement.

If my request for reappointment has not been favorably reconsidered, please advise when a conference with the School Board will be arranged.

Yours very truly,

/s/ Flossie V. Grimes
(Mrs.) Flossie V. Grimes

SUPERINTENDENT'S LETTER TO PLAINTIFF

NOTTOWAY COUNTY PUBLIC SCHOOLS

NOTTOWAY COURT HOUSE, VIRGINIA
H. L. Blanton, Superintendent

May 27, 1968

Mrs. Flossie V. Grimes
Luther H. Foster High School
Nottoway, Virginia

Dear Mrs. Grimes:

There will be a Special Meeting of the School Board on Wednesday, May 29, at 7:30 P.M. for the specific purpose of hearing your grievances resulting from your not being reappointed by the School Board for the school year 1968-69. If you can be present at 7:30 P.M., you will be placed first on the agenda.

Sincerely yours,

/s/ H. L. Blanton
H. L. Blanton, Division Supt.
Nottoway County Schools

HLB/hp

PRINCIPAL'S LETTER TO PLAINTIFF

LUTHER H. FOSTER HIGH SCHOOL

Office of the Principal
NOTTOWAY, VIRGINIA 23955

May 29, 1968

Mr. H. L. Blanton, Division Superintendent
Nottoway County School Board
Nottoway, Virginia

In regards to Mrs. Flossie V. Grimes, who I have not recommended for reappointment at Luther H. Foster High School for 1968-69.

I believe, the teacher is a leader, a planner, and is an over all coordinator of activities. It is her job to bring all factors that contribute to worthwhile learning together and apply them to the teaching and learning situation as efficiently as possible. Good teaching is the best means of preventing poor student-teacher relations. I think boredom is the greatest single cause of disciplinary problems. The teacher who meets the needs of her pupils through a good instruction program, she prevents disciplinary problems.

The teacher is an administrative worker who must be concerned with a great deal of routine. There are records to be kept, regulations to be followed, policies to be carried out, reports to be made, money to be collected, projects to be supported, arrangements to be made and a host of other activities, but the teacher is first of all a counselor, an understanding and helpful friend of his pupils. There are individual differences to be accounted for; need for sympathy and understanding; need for love and need for appreciation, encouragement, and guidance. The ultimate goal is self control.

We cannot get Mrs. Grimes to conform to the type of

program that we wish to carry out at Luther H. Foster High School. Therefore, I have not recommended her for re-employment at Luther H. Foster High School.

Yours very truly,

/s/ A. B. Cousins
A. B. Cousins, Principal

ABC/cme

EXCERPTS FROM REPORTER'S TRANSCRIPT

Testimony of Attorney Oliver W. Hill

[TR. P. 21]

BY MR. GREEN:

Q To repeat the question, what specific allegations, if any were made by Mr. Cousins besides the reading of that document?

A There was some discussion about Mrs. Grimes sending pupils to his office and he did, as I recall, indicate that she probably didn't maintain proper discipline.

Q Was there an attempt by Mrs. Grimes to have you to subpoena or to otherwise call witnesses in her behalf?

A We weren't granted a hearing for that purpose. There was no opportunity for that. I mean I raised the question that we should have the opportunity to bring in other members of the faculty, students and everybody else involved, but as I say no opportunity for such a hearing was ever established.

* * *

Testimony of Superintendent H. L. Blanton

[TR. PP. 79-80]

BY MR. GREEN:

Q Do you remember Mr. Hill suggesting to the Board

that a different type of hearing should be held under the circumstances with Mrs. Grimes?

A No, I don't. I remember Mr. Hill saying to our Board and all present that he felt that a conciliatory arrangement would be very important in this situation.

Q But you don't deny that he asked for a more formal kind of hearing mechanism before the determination?

A I don't recall that he asked for that. I am confident that if he had asked for it the School Board would have asked for it and asked him to set the date for it.

Q Why would they have done that, Mr. Blanton, when in twelve years as you testified, there was never an attempt to hold an adversary hearing?

A This adversary hearing is something new to me. My interpretation and definition of a hearing before a school board prior to today or prior to this cross-examination and being under oath and making records and so forth, has been to have a complainant come into the school board and submit whatever complaint they had and to bring in the other people but no sworn testimony or anything like that connected with it.

Q Would Mr. Hill have been allowed to have had that kind of hearing?

A Yes, sir.

THE COURT: In other words, would he have been allowed, if he requested it, to have you and all other witnesses sworn, put under oath, is what he's saying? You don't know whether he would or not; it hasn't ever been done, you say.

THE WITNESS: No, sir.

* * *

Testimony of Richard Henry Lee, Chairman of School Board

[TR. P. 100]

BY MR. GREEN:

Q Prior to that did you know it?

A I may have read something in the paper but it didn't impress me. I knew there was a formality of it of becoming law, but I'm just a layman.

Q Did you know what an adversary hearing was before the Judge explained it to you?

A No, sir.

* * *

Excerpt From Transcript Of Colloquy Between Trial Judge And Counsel For Both Parties

[TR. PP. 56-59]

MR. GREEN: The fact we are alleging is that the notice which is supposed to set out in some particularity—

THE COURT: To save time, so we can both understand each other, are you willing to concede for the sake of this hearing—I mean I will not limit you to anything else—that the question of whether they had grounds for not renewing her contract is not before the Court; the sole question that you want this Court to determine is whether they furnished her with an adversary-type hearing before not renewing her contract.

MR. GREEN: Yes, sir, that is the only question before the Court.

THE COURT: With that stipulation there's no use to offer it, Mr. Gray. He is conceding there isn't any question but what they had the right.

MR. GRAY: If your Honor please, I point out two things in connection with the stipulation: Number one, he has very carefully gone into her background including all of her degrees, and so forth, to show her qualifications, so I take it now that that is immaterial.

THE COURT: It is immaterial as far as I'm concerned.

MR. GRAY: Number two,—

THE COURT: I mean we are conceding for the sake of argument—

MR. GRAY: That they were justified in not re-employing her?

THE COURT: That's right. It goes no further than this.

MR. GREEN: That is exactly why I'm asking you not to sit in substitution for her judgment.

MR. GRAY: If your Honor please, one further point I think must be stipulated out of this case. They have alleged that because the schools in Nottoway County were segregated and the faculties were segregated that it was due merely to a personality conflict between Mr. Cousins.

THE COURT: He has expressly stipulated and he withdrew his own questions that he is not raising a racial question. He says there are no racial overtones in this case.

MR. GRAY: If your Honor please, it is agreeable to me, but I wanted it clear in the record.

THE COURT: He made it clear and the Court so found.

MR. GRAY: If I could just put this in, your Honor, that they allege, you see, that because there was one white high school and one colored high school this personality conflict prevented her—

THE COURT: I understand that, but I wouldn't let him go into it when he said there were no racial overtones in this case, and he said he withdrew that. I said lawyer talk doesn't disturb me that it is in the pleadings. I'm interested in the issue being tried.

All right.

The sole question that is reserved for determination in this court on the plaintiff's complaint by his own request is whether or not the School Board furnished an adversary-type hearing as a prerequisite in not renewing her contract; is that right?

MR. GREEN: That's correct, your Honor.

THE COURT: That is all he wants this Court to determine, Mr. Gray, so that's all I will hear.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 71-1417

FLOSSIE V. GRIMES,
Appellant,

-versus-

NOTTOWAY COUNTY SCHOOL BOARD,
THOMAS W. STAFFORD, SUPERINTENDENT,
ALTHEUS B. COUSINS, PRINCIPAL,
Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, Richmond Division.
Oren R. Lewis, District Judge.

(Argued October 5, 1971. Decided June 6, 1972.)

Before BOREMAN, Senior Circuit Judge, RUSSELL, Circuit Judge, and DUPREE, District Judge.

Robert M. Alexander, Arlington, Virginia (Hugh E. Watkins, Alexandria, Virginia on the brief) for appellant; Frederick T. Gray, Williams, Mullen & Christian, Richmond, Virginia (Copeland E. Adams, Blackstone, Virginia on the brief) for appellees.

DUPREE, District Judge:

Alleging a violation of her constitutional rights in its refusal to renew her contract of employment for the school year 1968-69, the plaintiff, a non-tenured high school teacher, brought this action against the defendant School Board, the superintendent and principal under the Civil Rights Act of 1871, 42 U.S.C. § 1983, seeking injunctive relief, back pay, attorney's fees and court costs. At the trial the plaintiff conceded that the failure to renew her contract was not based on the infringement of any of her substantive constitutional rights but insisted that she had not been afforded a hearing comporting with the minimum requirements of procedural due process. The district court found that plaintiff had in fact been given a hearing by defendants and concluded that "administrative due process was not lacking in the premises." The action was dismissed and we affirm.

The plaintiff had taught in the Nottoway County Schools for seventeen years. In the spring of 1968 she was told by her principal that he would not recommend her for reappointment for the coming school year. In the discussions with the principal and school superintendent which ensued the reasons for the principal's decision were explained to plaintiff. By letter to the superintendent dated May 20, 1968, plaintiff asserted that she was unable to reconcile these reasons with the severity of the action taken and she requested a meeting with the School Board "in order that our views may be reviewed and considered by this body." In this letter she listed the three subjects she wished to have discussed and considered.[1] Responding to this request by

[1] They were:

"1. The actual number of pupils referred to the office, instead of being released in the halls at will, has been small. It did

letter dated May 27, 1968, the superintendent informed plaintiff that a special meeting of the School Board had been called for May 29 "for the specific purpose of hearing your grievances."

The meeting was held as scheduled, and the plaintiff appeared with her counsel. The matter was given a full airing. The complaints made against plaintiff by the principal were general in nature and seemed to relate for the most part to disciplinary problems. There was no suggestion that plaintiff had been denied employment because of her race or for any other constitutionally impermissible reason. The superintendent reiterated his recommendation and plaintiff and her counsel stated their views. At the request of plaintiff's counsel the School Board's decision was deferred until the next regular meeting of the Board which was held on June 13, 1968.

Plaintiff and her attorney again appeared at the June meeting, but they tendered no witnesses, offered no additional evidence and did not seek to question further the principal and superintendent. They did not request a further hearing or postponement of decision. The School Board thereupon voted unanimously to follow the recommendations of the principal and superintendent and not to renew plaintiff's contract for the ensuing year. This suit followed.

There is a divergence of authority in the circuits on the question of the right of a teacher without tenure to a

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happen, however, that those who persisted in obstructing teaching-learning procedures were referred more than once.

"2. The reasons attempts were made, on my part, to make unscheduled pupil-teacher-principal talks brief by supplying written description was that to have done the opposite would have meant leaving the group unsupervised at a time psychologically inappropriate.

"3. Pupils who might have inferred any dislike about how their work is evaluated have been those who were using work-avoidance and defense mechanisms."

due process hearing upon non-renewal of a contract of employment.[2] This court has not been called upon to decide a case involving refusal to renew the contract of a non-tenured teacher unassociated with a claim of substantive constitutional right violation, but the lower courts of this Circuit, relying on decisions of this court in other public employee cases,[3] have consistently denied the right to a hearing in such cases.[4]

We need not decide here the question of plaintiff teacher's right to a hearing. Instead, we can assume *arguendo* that she was so entitled and confine our decision to the narrow issue stipulated by the parties and decided by the district court: Was the hearing afforded plaintiff adequate to satisfy the requirement of procedural due process? We hold that it was.

Plaintiff correctly asserts that if she was entitled to a hearing, minimal procedural due process required that she

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[2] *Roth* v. *Board of Regents of State Colleges*, 446 F.2d 806 (7th Cir. 1971), *aff'g.* 310 F. Supp. 972 (W.D. Wis. 1970), *cert. granted*, 404 U.S. 909 (1971), upheld the right of a non-tenured university professor to a hearing upon the non-renewal of his contract. *Freeman* v. *Gould Special School District*, 405 F.2d 1153 (8th Cir. 1969), *cert. denied*, 396 U.S. 843, 90 S.Ct. 61, 24 L.Ed.2d 93, and *Jones* v. *Hopper*, 410 F.2d 1323 (10th Cir. 1969), *cert. denied*, 397 U.S. 991, 90 S.Ct. 1111, 25 L.Ed.2d 399 (1970), denied the right. The *Roth* case is awaiting decision by the Supreme Court following argument on January 18, 1972. *Compare Drown* v. *Portsmouth School District*, 435 F.2d 1182 (1st Cir. 1970), *cert. denied*, 402 U.S. 972 (1971), as noted in 85 Harvard Law Review 1327 (April, 1972).

[3] Notably *Hodgin* v. *Noland*, 435 F.2d 859 (4th Cir. 1970) (city librarian); *Brown* v. *Hirst*, 443 F.2d 899 (4th Cir. 1971) (Municipal employee); and *Kirker* v. *Moore*, 436 F.2d 423 (4th Cir. 1971), *cert. denied*, 404 U.S. 824 (1971) (state road commission employees).

[4] *Johnson* v. *Fraley*, 327 F. Supp. 471 (W.D. Va. 1971) (non-tenured public school teacher); *Holliman* v. *Martin*, 330 F. Supp. 1 (W.D. Va. 1971) (non-tenured college professor); *Kota* v. *Little*, ___ F. Supp ..... (E.D. N.C. 1971) (non-tenured college professor. The case is presently on appeal.)

be given adequate notice, a specification of the charges against her, an opportunity to confront the witnesses against her and an opportunity to be heard in her own defense. *Ferguson* v. *Thomas*, 430 F.2d 852 (5th Cir. 1970). But it is equally true that "[T]he sufficiency of the proceedings employed must be judged in the light of the parties, the subject matter and the circumstances involved," and that "[W]hen no established procedures exist the school may adopt any method that is adequate to comply with the above minimums." *Id.* at 856.

Admittedly the first meeting of the School Board was called on short notice and at best it was an informal forum for the airing of plaintiff's grievances. There was no statutory procedure prescribed, however, and the evidence was that it was the only procedure the Board had ever employed in such cases.[5] Moreover, the plaintiff herself had requested this meeting, and she was able to attend in person and with counsel. No objection was raised as to insufficiency of notice, and any such objection must now be held to have been waived.

The reasons for the failure of the principal and superintendent to recommend plaintiff's reappointment apparently were not reduced to writing until the day of the School Board meeting, but the evidence was uncontradicted that she had been given the reasons orally. Conclusive evidence of this is to be found in the statement in her letter requesting the meeting that she found it difficult "to equate the reasons given not to recommend with the action taken."

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[5] On cross-examination the Chairman of the School Board who testified as a witness for defendants professed unfamiliarity with the meaning of "adversary hearing" and "due process," prompting the district judge to observe with respect to the latter than "an awful lot of lawyers and an equal number of judges are having an extreme difficulty with it."

At no time does it appear that she or her attorney requested a written specification of the charges against her.

The only two witnesses appearing against the plaintiff at the meeting were the principal and superintendent. These witnesses were not sworn and the proceedings were not reported, but the evidence at the trial fully warranted the district court's findings that the plaintiff had ample opportunity to question them.[6]

The same is true of the court's findings that plaintiff was permitted to develop her own case fully. She did not produce witnesses in her own behalf, but she had opportunity to do so both at the first meeting and at the second meeting which was held two weeks later.[7] She and her

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[6] "Although the School Board was not required to give the plaintiff a hearing re whether or not they were going to give her a teaching contract for the coming school year, under the then Virginia law they voluntarily did so. They convened a special Board meeting so that the members could give their undivided attention to her complaint—they heard everything she had to say and were willing to listen to any other persons she wanted them to hear—The school superintendent stated publicly the reasons for not recommending that she be rehired. They allowed her counsel of her own choosing and they gave him every opportunity to question the superintendent and/or any of the Board members. They deferred their final vote for some two weeks at his request. In fact, there is not one word of evidence in this case indicating that the plaintiff was denied the right to literally do anything she wanted to do or to say anything she wanted to say in respect to the subject matter under consideration."

[7] The decision not to call witnesses was apparently a deliberate choice of the plaintiff. In response to her counsel's questioning at the trial as to what she did upon receiving notice of the first meeting of the School Board plaintiff testified:

> "A. Well, I had debated what to do, if the two men weren't going to decide. I just wondered what I was going to do anyway and I didn't know what to do. But I had thought about this, and I had thought now, as you know, and the judge has mentioned so often we didn't want to bring race into this, and I didn't want to bring community people to the meeting; I didn't want to take my husband to the meeting; I didn't want to go alone and I . . . there were so many things happening. I thought we better

counsel were afforded ample opportunity to be heard at each of the two meetings.

We conclude that if plaintiff was entitled to a hearing, the procedures employed in the two meetings of the School Board comported fully with due process principles. This accords with the results reached by other courts faced with similar fact situations.[8] AFFIRMED.

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get to the bottom of what was happening in an authentic and responsible manner and once and for all and not to recover the ground, so I called Mr. Hill and said to him concerning the problem that I was having, I would like to have him accompany me to the meeting.

"Q. Now wou called a lawyer to go with you to the meeting; is that correct?

"A. Yes."

[8] *Toney* v. *Reagan*, 326 F. Supp. 1093 (N.D. Cal. 1971); *Worthington* v. *Joint School District No. 16*, 316 F. Supp. 808 (E.D. Wis. 1970); *Ramsey* v. *Hopkins*, 320 F. Supp. 477 (N.D. Ala. 1970, *modified on other grounds*, 447 F.2d 128 (5th Cir. 1971).

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In The

Supreme Court of the United States

October Term, 1971

No. 72-363

FLOSSIE V. GRIMES,

Petitioner,

v.

NOTTOWAY COUNTY SCHOOL BOARD, THOMAS W. STAFFORD, Superintendent, ALTHEUS B. COUSINS, Principal,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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In The

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BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

QUESTION PRESENTED

The question presented by the Petition for Certiorari is whether the issue resolved by the District Court and unanimously affirmed by the Court of Appeals for the Fourth Circuit is of sufficient magnitude to require further review by this Court.

Petitioner seeks to have heard five questions but, we submit, only one issue was necessary of determination by the Court of Appeals. That Court states the matter thusly:

"We need not decide here the question of plaintiff teacher's right to a hearing. Instead, we can assume *arguendo* that she was so entitled and confine our decision to the narrow issue stipulated by the parties and decided by the district court: Was the hearing afforded plaintiff adequate to satisfy the requirement of procedural due process? We hold that it was."

ARGUMENT

I.

The Hearing Afforded Petitioner Was Adequate

The findings of the District Court should dispose of any doubt as to the adequacy of the hearing. Judge Lewis wrote:

"They convened a special board meeting so that the members could give their undivided attention to her complaint—they heard everything she had to say and were willing to listen to any other persons she wanted them to hear—The school superintendent stated publicly the reasons for not recommending that she be rehired. They allowed her counsel of her own choosing and they gave him every opportunity to question the superintendent and/or any of the board members. They deferred their final vote for some two weeks at his request. In fact, there is not one word of evidence in this case indicating that the plaintiff was denied the right to literally do anything she wanted to do or to say anything she wanted to say in respect to the subject matter under consideration."

The Court of Appeals affirmed with the following finding:

"Admittedly the first meeting of the School Board was called on short notice and at best it was an informal forum for the airing of plaintiff's grievances. There was no statutory procedure prescribed, however, and the evidence was that it was the only procedure the

Board had ever employed in such cases. Moreover, the plaintiff herself had requested this meeting, and she was able to attend in person and with counsel. No objection was raised as to insufficiency of notice, and any such objection must now be held to have been waived.

The reasons for the failure of the principal and superintendent to recommend plaintiff's reappointment apparently were not reduced to writing until the day of the School Board meeting; but the evidence was uncontradicted that she had been given the reasons orally. Conclusive evidence of this is to be found in the statement in her letter requesting the meeting that she found it difficult 'to equate the reasons given not to recommend with the action taken.' At no time does it appear that she or her attorney requested a written specification of the charges against her.

The only two witnesses appearing against the plaintiff at the meeting were the principal and superintendent. These witnesses were not sworn and the proceedings were not reported, but the evidence at the trial fully warranted the district court's findings that the plaintiff had ample opportunity to question them.

The same is true of the court's finding that plaintiff was permitted to develop her own case fully. She did not produce witnesses in her own behalf, but she had opportunity to do so both at the first meeting and at the second meeting which was held two weeks later. She and her counsel were afforded ample opportunity to be heard at each of the two meetings.

We conclude that if plaintiff was entitled to a hearing, the procedures employed in the two meetings of the School Board comported fully with due process principles. This accords with the results reached by other courts faced with similar fact situations."

CONCLUSION

We respectfully submit that the Petitioner has been heard by the School Board and two Federal Courts—there is no reason why a further review should be granted.

Respectfully submitted,

COUNTY SCHOOL BOARD OF
NOTTOWAY COUNTY
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